

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

BARBARA CAPOBIANCO,	:	
Plaintiff,	:	
	:	
v.	:	CA 08-429 M
	:	
MICHAEL J. ASTRUE,	:	
Commissioner,	:	
Social Security Administration,	:	
Defendant.	:	

MEMORANDUM AND ORDER

This matter is before the Court on the request of Plaintiff Barbara Capobianco ("Plaintiff") for judicial review of the decision of the Commissioner of Social Security ("the Commissioner"), denying Disability Insurance Benefits ("DIB") under §§ 205(g) and 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. §§ 405(g) and 1383(c)(3) ("the Act"). Plaintiff has filed a motion to reverse the Commissioner's decision. Defendant Michael J. Astrue ("Defendant") has filed a motion under sentence four of 42 U.S.C. § 405(g) for remand of the case to the Commissioner for further administrative proceedings, and Plaintiff consents.

With the parties' consent, this case has been referred to a magistrate judge for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b). I find that remand to the Commissioner is appropriate. Accordingly, I order that Defendant's Motion for Entry of Judgment under Sentence Four of 42 U.S.C. Section 405(g) with Reversal and Remand of the Case to the Defendant (Document ("Doc.") #11) ("Motion to Remand") be granted and that Plaintiff's Motion to Reverse the Decision of the Commissioner (Doc. #9) ("Motion to Reverse") be granted to the extent that the matter be remanded for further administrative proceedings.

Discussion

Section 405 of Title 42 of the United States Code ("U.S.C.") provides, in relevant part, that: "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Defendant "requests that this Court remand this case to an administrative law judge (hereinafter "ALJ") for further development of the record as it pertains to the medical opinions in the record." Memorandum in Support of Motion for Entry of Judgment under Sentence Four of 42 U.S.C. Section 405(g) with Reversal and Remand of the Case to the Defendant ("Defendant's Mem.") at 1. Defendant further suggests that, upon remand, the ALJ "be given instructions to evaluate all of the opinion evidence of record, including the opinions of non-examining sources, consultative examining sources, and treating sources, and explain the weight afforded to these opinions in accordance with 20 C.F.R. section 404.1527 as well as Social Security Rulings 96-2p, 96-5p, and 06-3p." Id.

The Court agrees that remand is warranted. Accordingly, I order that the Commissioner's decision be reversed, that the matter be remanded to the Commissioner for further administrative proceedings, and that judgment be entered for Plaintiff.

Conclusion

I order that Defendant's Motion to Remand be granted and that Plaintiff's Motion to Reverse be granted to the extent that the matter be remanded to the Commissioner for further administrative proceedings as outlined above. Judgment shall enter for Plaintiff.

So ordered.

ENTER:

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
August 26, 2009